

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHRISTI L. ROLLINS,)
Plaintiff,)
vs.)
MICHAEL J. ASTRUE,)
Commissioner of Social Security,)
Defendant.)
Case No. 4:10CV720RWS(MLM)

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

This matter is before the court on Defendant's Motion to Reverse and Remand pursuant to 42 U.S.C. § 405(g), sentence four. [Doc. 6] The case was referred to the undersigned United States Magistrate Judge for appropriate disposition pursuant to 28 U.S.C. § 636(b). [Doc. 2]

The issue in this case is whether plaintiff is entitled to disability insurance benefits under Title II of the Social Security Act and Supplemental Security Income (SSI) under Title XVI of the Social Security Act. After careful review of the above-captioned case, agency counsel requested that the Appeals Council of the Social Security Administration reconsider the Commissioner's decision, which they agreed to do. Upon review, the Appeals Council determined that remand was appropriate for further consideration of plaintiff's claim.

Upon receipt of the court's remand order, the Appeals Council will remand this case to the Administrative Law Judge (ALJ). The ALJ will reevaluate plaintiff's residual functional capacity (RFC) consistent with his findings regarding limitations

in social functioning resulting from plaintiff's severe mental impairment. The ALJ will also obtain vocational expert testimony.

Remand by this court is appropriate under 42 U.S.C. § 405(g) which provides:

The court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner, with or without remanding the cause for a rehearing.

Remand would expedite administrative review, insure that the Commission properly considers plaintiff's claim and could make judicial review unnecessary.

Pursuant to the Supreme Court's decision in Shalala v. Schaefer, 509 U.S. 292 (1993), the court should enter final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure reversing the decision of the ALJ and remanding this case to the Commissioner under sentence 4 of 42 U.S.C. § 405(g). Pursuant to Brown v. Barnhart, 282 F.3d 580 (8th Cir. 2002), it is critical that the court specifically include in its order that it is "reversing and remanding" the case. In Brown, the Eighth Circuit noted that in the absence of an order which includes "affirm, modify, or reverse" there "is no statutory 'power' to remand pursuant to sentence four." Id. at 581.

Entry of the final judgment reversing and remanding this case will begin the appeal period which determines the 30-day period during which a timely application for attorney's fees may be made under the Equal Access to Justice Act (EAJA).

Accordingly,

IT IS HEREBY RECOMMENDED that Defendant's Motion to Reverse and Remand be **GRANTED**. [Doc. 6]

IT IS FURTHER RECOMMENDED that a final judgment be entered reversing and remanding this case to the Commissioner of Social Security for further consideration pursuant to sentence 4 of 42 U.S.C. 405(g).

IT IS FURTHER RECOMMENDED that a final judgment be entered in order to begin the appeals period which determines the 30-day period during which a timely application for attorney's fees may be made under the Equal Access to Justice Act (EAJA).

The parties are advised that they have fourteen (14) days in which to file written objections to this Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1), unless an extension for good cause is obtained, and the failure to file timely objections may result in a waiver of the right to appeal questions of fact. See Thompson v. Nix, 897 F.2d 356 (8th Cir. 1990).

/s/Mary Ann L. Medler
MARY ANN L. MEDLER
UNITED STATES MAGISTRATE JUDGE

Dated this 26th day of August, 2010.